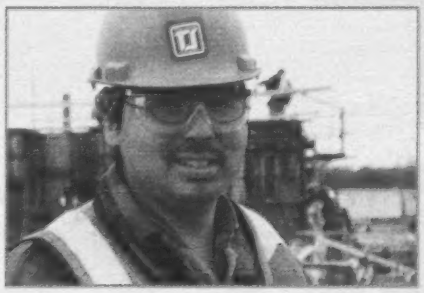
Aboriginal Affairs and Northern Development Canada
Affaires autochtones et Développement du Nord Canada

# FIRST NATIONS LAND MANAGEMENT

# Readiness Guide



## A Guide for First Nations Interested in the First Nations Land Management Regime

Canada

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# Introduction

This guide is designed to provide First Nations interested in assuming jurisdiction over their reserve lands and resources with useful information on the requirements and benefits of entering the First Nations Land Management (FNLM) Regime. This guide explains what can be expected within the full FNLM process, how First Nations can apply, and how First Nations are assessed for selection into FNLM, including the specific criteria and rationale Aboriginal Affairs and Northern Development Canada (AANDC) uses to assess and recommend new entrants to the Minister. Specifically, this guide explains:

***Eligibility:*** The basic requirements that a First Nation must have to be considered for entry into the FNLM Regime. Eligibility is determined by a number of factors; reviewing the score provided from a First Nation's General Assessment (as assessed by AANDC, this is a measure of risk associated with the management of transfer payments to First Nations, among other things), financial history, including any recent instances of third-party or co-management, and financial compliance in terms of the provision of qualified audited financial statements over the past three years.

***Readiness:*** That interested First Nations will be required to complete a questionnaire as part of their application. Readiness is determined by assessing the strength of a First Nation based on the following criteria or 'assessment pillars'; governance and communication, existing land management experience, current economic development activities, capacity and potential, and whether there are any existing land-related issues on reserve.

***The FNLM Process:*** What a First Nation can expect upon entry into the Regime, including key attributes of the developmental and operational phases and how the level of funding for each of these phases is determined.

***Benefits of Joining:*** First Nations who have selected the FNLM Regime and become operational under their community land code have had many successes as a result of assuming control and decision-making over their reserve lands. This guide outlines (in Annex A) some of these benefits that have been identified over the years by participating First Nations and also from independent studies on the benefits of the FNLM Regime.

By the end of this guide, interested First Nations will have an understanding of what it takes to be considered ready for the FNLM Regime by AANDC and if they believe their community is ready.

Feedback is always appreciated and we encourage you to write us regarding this guide at gtpn-fnlm@aadnc-aandc.gc.ca.

## What is the FNLM Regime

For years First Nations have expressed concern that land management under the *Indian Act* does not allow their communities to fully participate in sustainable economic development activities on their reserve land. In 1990, a group of First Nation Chiefs approached the Minister of Indian and Northern Affairs with a framework agreement proposal that would enable their members to consider opting out of land related sections of the *Indian Act* and assume jurisdiction over their reserve lands and resources under their own land code.

Canada supported this step towards self-sufficiency and signed the Framework Agreement on First Nation Land Management (Framework Agreement) with 14 First Nations. In 1999, the *First Nations Land Management Act* (FNLMA) received royal assent, which ratified and brought the Framework Agreement into effect.

Responding to increasing demand from other First Nations to have the same opportunity, the Framework Agreement and the FNLMA were amended in 2002 to open the Regime to other interested First Nations. These amendments also expanded the law making authority of First Nations to include matrimonial real property.

*The term 'First Nations Land Management Regime' refers to the Framework Agreement and the FNLMA, which together provide this opportunity for First Nations to opt out of land-related sections of the Indian Act and assume jurisdiction over their reserve lands and resources under their own land code.*

The FNLM Regime provides operational First Nations with law making powers and management authority over reserve lands, the legal capacity to acquire and hold property, to borrow, to contract, and to expend and invest money. In addition, First Nation reserve land and the venues, royalties, profits and fees in respect of that land are managed by the First Nation, not by Canada. Although the Framework Agreement and the FNLMA does not fundamentally alter the Crown's fiduciary relationship to signatory First Nations, certain fiduciary obligations of the Crown do diminish as First Nations exercise their law making powers and take on their responsibilities under their land codes. The transition from the *Indian Act* to a community land code does not affect the title to the reserve land. The underlying title remains with the federal Crown and the land will continue to be land reserved for the Indians.

AANDC worked with the Lands Advisory Board (for more information, please see the section titled 'Role of the Lands Advisory Board and Resource Centre' on page 16) to amend the FNLMA in 2012 in an effort to respond to lessons learned after over 10 years of operating the Framework Agreement and FNLMA. These amendments are improvements as a result of experience gained by the 34 First Nations currently operating under their own land codes. These amendments received Royal Assent on June 29, 2012, as part of the legislation to implement the Economic Action Plan 2012 and the Jobs, Growth and Long-Term Prosperity Act.

The amendments strengthen the FNLM Regime by: expediting the processes for operational First Nations to enact environmental laws; expediting the process for developmental First Nations by excluding land from a land code when it is uncertain whether the particular land forms part of the reserve; removing any uncertainty as to the date when a land code come into force after the community

vote; and bringing clarity to the schedule of First Nations listed in the FNLMA. Taken together, these amendments remove identified legislative barriers that prevented or delayed First Nations from taking full advantage of the benefits of assuming land management responsibility under the FNLMA.

## Who can Join the FNLM Regime

Any First Nation with lands reserved for the Indians under the *Indian Act* may consider the FNLM Regime.

### Eligibility

Generally, First Nations considered ready for entry into FNLM Regime are those who:

- have a low or medium General Assessment score
- have not had Expert Resource Support or a Third Party Funding Agreement Manager or, if they have, can demonstrate effective measures taken to remedy the cause of the default, and that they no longer require this level of intervention
- have provided AANDC with consolidated audited financial statements in accordance with Canadian Accounting Standards continually for a minimum of 3 years

### General Assessment

The General Assessment (GA) is a tool used by AANDC to provide an annual snapshot of all funding recipients' past performance and is designed to assess a First Nation's overall risk rating. It also identifies strengths and emerging risks that may have an impact on how AANDC manages transfer payments to recipients. A high GA rating indicates that there is a high risk that the First Nation may experience difficulties in completing the Community Approval Process Plan under the developmental phase of the FNLM Regime, which includes drafting a land code and negotiating an Individual Agreement with Canada. First Nations with high GA scores are encouraged to identify the areas which resulted in their high GA score and to work with the AANDC Regional Office to develop a plan to address these areas prior to seeking entrance to the FNLM Regime.

### Expert Resource Support or a Third Party Funding Agreement Manager

Circumstances that require Expert Resource Support or a Third Party Funding Agreement Manager interventions are outlined in AANDC's Default Prevention and Management Directive[1]. This directive was developed to assist AANDC in supporting community capacity development so that communities can increase their ability to self-manage and prevent default and default recurrence.

These two levels of intervention increase the scale of involvement by AANDC to assist First Nations in identifying and remedying the causes that lead to the default.

First Nations who are supported work collaboratively with an expert hired by the First Nation to address the causes of the default, and then identify and develop the necessary capacity to prevent recurrence. First Nations who have recently been supported must be able to demonstrate they have successfully

[1] AANDC Default Prevention and Management Directive http://www.aadnc-aandc.gc.ca/eng/1325176493347/1325176537107

addressed the cause(s) that led to the default and have developed the necessary capacity to prevent its recurrence.

Third-party funding agreement managers are contracted by AANDC to administer AANDC-based funding for the delivery of programs and services, and work to remedy the underlying causes of the default.

First Nations who have recently been under third-party funding agreement management must clearly demonstrate the measures taken to remedy the cause of the default and that they have the capacity to effectively and efficiently deliver the programs and services funded by AANDC, prior to seeking entrance into the FNLM Regime.

### Withheld Opinion on Audited Financial Statements

In support of its mandate and responsibilities, AANDC provides funding for programs, services and initiatives to First Nation governments. Some components of the First Nation's financial reporting requirements must be independently audited; therefore, the recipient must provide AANDC with consolidated audited financial statements in accordance with Canadian Accounting Standards.

Due to the importance of strong, stable and transparent financial management, a First Nation which has withheld opinion(s) on audited financial statements in the previous three years would not be considered ready to opt into the Regime at this time. Should a First Nation have a withheld opinion, the First Nation is encouraged to eliminate the financial practices that resulted in the withheld opinion prior to seeking entrance to the FNLM Regime.

## How to Join the FNLM Regime

It is important that First Nations understand the implications of opting into the FNLM Regime prior to seeking entry because there is no option to return to *Indian Act* land management. The following information describes the application process and includes a rationale on what factors are assessed. Should First Nations have additional questions regarding entering the FNLM Regime or the application process, the Lands Advisory Board, the FNLM Resource Centre and your AANDC Regional Office can assist you further. Their contact information is provided in Annex B.

### Application and Acceptance

A First Nation must first submit a Band Council Resolution to the Lands Advisory Board or AANDC, formally expressing their interest to opt into the Regime. In addition, a completed questionnaire must be submitted to an AANDC Regional Office. AANDC undertakes a two-step review process resulting in a tiered list of FNLM-ready First Nations presented to the Minister for consideration. Those First Nations selected for entry will receive written confirmation from the Minister welcoming them into the FNLM Regime. Not all First Nations identified as FNLM ready will be accepted into the FNLM Regime. Final acceptance depends on availability of federal funding for the FNLM Regime.

#### Application

##### *Band Council Resolutions*

A Band Council Resolution (BCR) is part of the application process since it formally expresses a First Nation's interest in the FNLM Regime and must be the result of a duly convened meeting by the current Chief and Council and forwarded to either the Lands Advisory Board or an AANDC Regional Office. First Nations may be asked by the Lands Advisory Board to submit updated BCRs to confirm continued interest. Contact information has been provided in Annex B.

##### *The Assessment Questionnaire*

In addition to a BCR, interested First Nations must complete an assessment questionnaire as part of the application process. The questionnaire was developed jointly by AANDC and the Lands Advisory Board as a tool to assist AANDC in determining readiness. The Questionnaire takes into consideration five main components that have been identified as strong indicators of success in the Regime, namely: economic development potential; economic development capacity; environmental management experience; governance and communication tools; and any outstanding land issues. A copy of the Questionnaire has been provided for your information in Annex D.

The following sections explain why each of the five components is considered an indicator of success and will help First Nations determine their own readiness for the FNLM Regime.

> Why assess economic development potential and capacity?
>
> The potential and capacity of a First Nation to develop economically has been a key driver in identifying operational success under the Regime. First Nations with detailed plans which outline short and long term economic development opportunities are more likely to attract

business ventures that generate revenue and create employment opportunities for their members.

Factors that have contributed to successful economic development opportunities include the use of strategic economic development plans which, for example, are implemented using an annual operational plan, contain formal statements of a community vision and strategic direction and identify and analyse listed strengths and weaknesses.

These plans should also identify potential economic opportunities and projected benefits for the community. This could include: the expected number of jobs to be created; the number of people to be trained; the amount of community revenue to be generated; and the number of new businesses or contracts to be created.

*Is your First Nation actively involved in business? Are you pursuing ventures and partnerships to increase economic development on reserve? Do you have an economic development or similar business focused plan? Have your plans been implemented?*

Finally, measurable factors that have been identified and are used to determine the economic capacity of a First Nation include: A track record of successful economic development projects implemented; a track record of success in negotiations with industry partners leading to joint ventures; having skilled human resources available to support economic development activities; having an economic development organization in place (e.g. economic development corporation with a separate Board of Directors); and access to capital, for example land and resources or cash equity that can be developed or leveraged to create further economic benefits.

Why assess land and environmental management experience?

Legal rights and interests in land are an important part of many economic development activities on reserve. The more authority and responsibility First Nations have in managing legal rights and interests in land, the easier it may be to promote economic development. Increasing the capacity of First Nations in land administration and management supports economic development on reserve.

A few FNLM First Nations who began operations under their land code without land management experience have indicated initial delays in undertaking some of the essential activities related to operating under their own land codes and in supporting business and community expectations.

Operational First Nations under their own land code manage and administer the following essential activities according to their own land code:

- Land transactions and registrations
- Permit, licenses and land designations
- Mortgages and related terminations

- Infrastructural leases
- Access roads, hydro transmissions lines, communications towers
- Environmental management, land use planning
- Managing third-party interests
- Law creation, land administration and enforcement

AANDC offers the Reserve Land and Environment Management Program (RLEMP) which is designed to enable First Nations under the *Indian Act* to develop and sustain land natural resources and environmental management expertise. FNLM First Nations who had land management experience such as RLEMP, prior to operating under their land codes have mentioned that this training has assisted their transition out of the *Indian* Act.

*Does your First Nation have a land management office with experienced land manager(s)?*

AANDC also is aware that some First Nations currently have local or internal land management policies in place which were not developed as a result of training under the RLEMP. This experience is taken into consideration when assessing the capacity to administer land-related activities. It is not necessary that First Nations complete RLEMP if they have developed capacity through other means.

Why assess governance and communication?

Success in the FNLM Regime is more likely to be realized by First Nations with stable governance, clear policies, economic and procedural transparency and accountability. Band Councils that deal with complaints or allegations and strong communications tools and practices to interact with community members are more likely to gain community and stakeholder support for economic development activities and opportunities that require community consent in order to proceed with its development. Community-focused governance can be illustrated by a First Nation through established practices, such as published audited financial statements, strategic or community plans as well as operational or business plans.

*How are your community members informed of decisions made by Chief and Council? How does your community participate in decision making? How does your community access financial and audit reports?*

The FNLM Regime requires First Nations to actively engage with members throughout the developmental phase to ensure community participation in the development of the land code and the negotiation of the Individual Agreement, and to provide the community with a clear understanding of what operating under FNLM Regime will mean to Band members. First Nations cannot move from the developmental to the operational phase without a successful ratification vote on their land codes and Individual Agreements by a majority of eligible or registered voters. Informed

and engaged communities are more likely to support their Band Council on business ventures or opportunities to develop their communities.

From the submitted Questionnaire and a review of First Nations' websites, newsletters and other public documents, AANDC is able to assess the kind of communication tools the First Nation has in place to promote community relationship-building and support effective governance structures and processes. Experience has demonstrated that First Nations with strong governance and well established lines of communication with their community members are more likely to garner the community support required to successfully ratify their land code and Individual Agreement.

Why assess land issues?

Under FNLM, a land code sets out the basic provisions regarding the exercise of a First Nation's rights and powers over their reserve land. A First Nation with more than one reserve can manage one or more of its reserves under a land code. However, if a First Nation wishes to manage only one of its reserves under FNLM, they must include the entire reserve under their land code to avoid the disjointed administration of that reserve. That said, the Regime does provide some flexibility by providing that in certain circumstances, such as environmental contamination or litigation, portions of a reserve may be excluded from the application of a land code until the reason that justified the exclusion is resolved.

In addition, a First Nation under FNLM is required to enact environmental assessment and protection laws which, at a minimum, must have the same standards and penalties as that of the province where the First Nation resides. Identifying any environmental challenges or land-related concerns, prior to submitting an application to enter the Regime, provides an opportunity for the First Nation to develop a plan with AANDC Regional offices to address the issue(s) that may prevent or delay the First Nation from developing or proceeding to a ratification vote on their land code.

*Is your reserve free from land title or boundary issues? Do you know that recent amendments have been made to the FNLMA to provide enhanced exclusion provisions?*

When completing the Questionnaire, First Nations should provide as much information as deemed necessary to support responses. AANDC Regional Offices, the Lands Advisory Board, or the FNLM Resource Centre are available to assist First Nations in completing the Questionnaire.

First Nations should return the completed Questionnaire to AANDC Regional Offices. Annex B is a list of FNLM offices and their contact information.

## AANDC Assessment

Prioritization of applications is necessary to allocate funding to support First Nations with the most capacity to assume autonomous land management under the FNLM Regime.

Assessment for entry into FNLM is conducted at a regional and national level and is based on a First Nation's completed Questionnaire as well as financial records and their General Assessment score. The Questionnaire provides information to AANDC on the First Nation's readiness to enter into the FNLM Regime; recommendations to the Minister are based on the strongest submissions.

After receipt at the AANDC Regional Office, a First Nation's completed Questionnaire will be reviewed in an effort to expand on the information provided. Should the Regional Office have questions on details or notice an opportunity to provide more information on your submitted assessment, they may contact you. Likewise, you can contact them with questions you may have while completing the Questionnaire. A package containing both the First Nation's questionnaire and the Region's review will be sent to Headquarters for assessment and recommendations to the Minister.

Once the First Nation's package is received from the Regional Office, Headquarters will confirm that eligibility requirements were met and will compile the information provided with any other reports, records (such as financial records), General Assessment scores and other online materials to support the First Nation's application to the Regime. For more information on what information is collected, please see related sections: 'Eligibility' (page 7) and 'How to Join the FNLM Regime' (page 9).

### Ranking

Once full assessments of each First Nation have been compiled, a tier level will be assigned to each application. Tiers are used to showcase how the First Nation's readiness for FNLM is identified, as indicated in their submitted Questionnaire and other supporting reports, records and online materials.

First Nations are ranked in one of five tiers; tier one being the lowest and tier five being the highest and most ideal. First Nations ranked into higher tiers are more likely to be selected than those First Nations who are ranked in the lower tiers. First Nations in the lower tiers can work with AANDC Regional Offices to identify the areas that need to be strengthened or further developed, prior to resubmitting an application to enter the Regime.

### Recommendation to the Minister

The information submitted by the First Nation as well as departmental recommendations will be presented to the Minister for consideration. The number of First Nations accepted in the future, and the timing of future entry into FNLM depends on many factors, not just a favourable recommendation by departmental officials. First Nations selected for entry will be contacted by the Minister and the Lands Advisory Board.

## Entry into the FNLM Regime

If a First Nation is accepted for entry into FNLM, the Minister will send a letter welcoming a First Nation into the Regime and indicating next steps. Included in the next steps is the signing of an adhesion document that will add the First Nation as a signatory to the Framework Agreement on First Nation Land Management. Once the adhesion document is signed, AANDC will provide funding for the developmental phase which focuses on the development of a First Nation's land code. For more information on funding, please see the section titled 'Funding' on page 15.

### Phases of the Regime

There are two phases to the Regime. The first phase is a developmental period typically taking 24 months to complete. The second phase is the full operational phase which begins after the First Nation and the Minister sign the Individual Agreement authorizing the First Nation to operate under its community approved land code.

#### Phase 1: Developmental

A First Nation enters the developmental phase of the Regime once they have signed the adhesion document adding them as signatories to the Framework Agreement.

A First Nation in the developmental phase has 24 months to complete all the steps set out in the Community Approval Process Plan (CAPP), which includes, among other activities, the development of their land code and the negotiation of their Individual Agreement with Canada. Both documents must be approved by the First Nation through a community ratification vote, as outlined in the Framework Agreement. (Please see Annex C for CAPP milestones). The ratification vote includes participation by all eligible or registered band members aged 18 years or older.

At the beginning of the developmental phase, an independent person is appointed as a verifier to monitor and verify the opting in process. The selection and assignment of the verifier and the procedure to be followed by the verifier is arranged by the LAB, Canada and the First Nation. Once the verifier confirms that the proposed land code and community approval process are consistent with the Framework Agreement, the First Nation may proceed to a ratification vote by its membership. Following a successful vote the verifier will certify the land code and Individual Agreement as properly approved by the First Nation membership, which then allows the Minister to sign the Individual Agreement with the First Nation to transfer control for the First Nation to commence operations under their land code.

#### Phase 2: Operational

Once a First Nation begins operating under their land code, 34 sections of the *Indian Act* related to land, resources and environment no longer apply to this First Nation. AANDC funding to First Nations to manage lands and to make, administer and enforce its laws under a land code, is set out in the Individual Agreement between Canada and the First Nation. The funding arrangement will have a maximum term of five years and will include provisions for its amendment and re-negotiation.

In addition to other laws, operational First Nations are obligated to establish a law applicable on the breakdown of a marriage for the use, occupancy and possession of the First Nation land, including the division of interests or land rights to that land. The First Nation will have 12 months from the date the land code takes effect to enact the rules and procedures, which cannot discriminate on the basis of sex and must be enacted in the First Nation's land code or First Nation laws. Please visit the Lands Advisory Board's website for more information at www.labrc.com.

## Funding

Funding provided for the FNLM Regime is established under a formula that is negotiated every five years with the Lands Advisory Board.

Under the current funding agreement, each First Nation in the Regime receives a total of $150,000 contributory funding over the 24 month developmental phase, as a contribution to the costs of completing the CAPP. After a successful community ratification vote and signing of the Individual Agreement, when a First Nation first becomes operational, the current funding formula provides for transitional funding (in addition to ongoing operational funding) which is primarily aimed at supporting the new environmental protection and assessment responsibilities undertaken by new FNLM First Nations. This transitional funding is time limited to the first two years of operation under FNLM.

*If a First Nation chooses to take longer than 24 months to complete the developmental phase, no additional funding beyond the $150,000 maximum will be provided by Canada.*

Operational First Nations receive funding based on the funding formula set out in the Individual Agreement signed by the Minister and the First Nation. First Nations are provided with operational funding to help manage their lands and make, administer and enforce their laws under a land code, and to establish and maintain environmental assessment and environmental protection regimes. There are three funding levels under which an operational First Nation will be funded.

- Operational First Nations listed in Tier I will be provided funding of $204,536 each year for 4 years starting April 1, 2012
- Operational First Nations listed in Tier II will be provided funding of $251,636 each year for 4 years starting April 1, 2012
- Operational First Nations listed in Tier III will be provided funding of $317,386 each year for 4 years starting April 1, 2012

These three funding tiers are determined based on three historical averages of funding for lands related activities. Those First Nations falling between an average of $0 to $200,000 are considered Tier 1, $200,001 to $300,000 Tier 2 and $300,001 or above Tier 3.

## Alternative Entry Option: Aggregation

Aggregation is an alternative entry option where First Nations agree to enter the FNLM Regime as a group. Under this option, First Nations would share experience, expertise and the funding equivalent to one entrant through the developmental and operational phase of the FNLM Regime. First Nations are

expected to enter and transition through the FNLM phases as a group. Communities entering through this option should ensure that roles and responsibilities as they progress through the FNLM Regime are identified and discussed prior to submitting an application.

## Role of the Lands Advisory Board and Resource Centre

The Lands Advisory Board (LAB) and Resource Centre (RC) assists First Nations interested in opting into the Regime. Under the Framework Agreement, the LABRC is also responsible for developing model land codes, laws and systems, establishing a resource centre for training programs, courses and materials relevant to land codes, and proposing regulations for First Nation land registration. At the request of a First Nation, the LABRC can also assist First Nations in developing their individual land codes, land management systems, environmental assessment and other protection regimes. The LABRC may also assist First Nations in obtaining the expertise necessary to resolve land management difficulties.

The LAB is mandated to propose amendments to the Framework Agreement to the Minister of AANDC and to negotiate the funding formula for FNLM First Nations in the operational phase of the Regime. The LAB may perform other functions or services for a First Nation as agreed to by the Parties.

*Did you know that the Lands Advisory Board has a virtual resource centre to assist you in every stage of the Regime, including pre-entry?*

Please visit the LAB's website for more information at www.labrc.com.

## Annex A: Benefits of Joining the FNLM Regime

The FNLM Regime allows First Nations to opt out of 34 sections of the *Indian Act* related to land, resources and environmental management and removes Ministerial oversight and approval relating to the development and use of their land. FNLM unlocks two key elements (land management, and First Nation law making) that improve First Nation land management.

### Benefits to First Nations (including to Treaty/Tribal Council First Nations)

The benefits to First Nations under the First Nations Land Management Act are numerous and are not easily quantified. First Nations who operate under their own land codes have reported significant benefits including, but not limited to:

- Drastic reduction of time and costs associated with the processing of land transactions
- Increased certainty for land interest holders
- Ability to mortgage individual interests
- Electronic/paperless/instant/regulation backed First Nation Land Registry System
- Title insurance
- Direct collection of land revenues by First Nation
- Ability to create laws, processes, procedures and instruments in a timely and transparent fashion
- Lands continue to be "Lands Reserved for Indians" as specified by section 91.24 of the Constitution
- Direct control of land revenue previously held in trust by AANDC
- Approximately one-third of the *Indian Act* no longer applies to the First Nation's reserve
- Community control over reserve lands and resource utilizing the First Nation's practices and traditions
- Participation of both on and off members in decision and law making processes
- Increased accountability to members
- Legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, etc.
- First Nation created environmental assessment and protection laws
- Ability of First Nations to address the regulatory gap on procedures and rules related to land during marriage breakdown
- Ability to create modern offences and enforcement for breach of First Nation laws
- Ability to appoint Justices of the Peace
- Ability to engage and develop dispute resolution processes
- Recognition of the inherent right to govern reserve lands and resources

KPMG conducted an independent study in 2009 on the cost and benefits of FNLM by surveying 17 First Nations who had been operational for several years. KPMG reported an average of 40% increase in new business and a 45% increase in the types of businesses and business in new sectors, including supplier and spin off businesses. In addition, KPMG data indicates that First Nations have:

- Better relationships with third-parties due to their increased sense of certainty and a better negotiating environment

- Better market opportunities through enhanced communications, ability to compete, enhanced timing and implementation of instruments as well as better relationships with industries and municipalities
- Better circumstances to attract business to reserves through direct access to First Nation representatives, increased sense of security for investors and simplified processing conditions
- Experienced a shift in quality of jobs available on reserve with a greater quantity of employment opportunities thereby reducing the dependence on social programming and increasing local economies
- Attracted significant internal investment through member-owned enterprises and external investment in joint partnerships with third parties

Interestingly, in the 2009 KPMG's study, each of the 17 First Nations interviewed reported that they would not consider returning to land management under the *Indian Act*.

## Annex B: Contacts

### AANDC Regional Offices

**Atlantic Region**

Aboriginal Affairs and Northern
P.O. Box 160
40 Havelock Street
Amherst, Nova Scotia
B4H 3Z3
1-800-567-9604
(902) 661-6200
fax: (902) 661-6237

**Alberta Region**

Aboriginal Affairs and Northern
630 Canada Place
9700 Jasper Avenue
Edmonton, Alberta
T5J 4G2
(780) 495-2773
fax: (780) 495-4088

**Quebec Region**

Aboriginal Affairs and Northern
Place Jacques-Cartier Complex
320 St. Joseph Street East
Suite 400
Quebec, Quebec
G1K 9J2
1-800-567-9604
1-800-263-5592
fax: (418) 648-2266

**British Columbia Region**

Aboriginal Affairs and Northern
Suite 600
1138 Melville Street
Vancouver, B.C.
V6E 4S3
(604) 775-7114
(604) 775-5100
fax: (604) 775-7149

**Ontario Region**

Aboriginal Affairs and Northern
8th Floor 25 St. Clair Avenue East
Toronto, Ontario
M4T 1M2

**Northwest Territories Region**

Aboriginal Affairs and Northern
P.O. Box 1500
Yellowknife, N.W.T.
X1A 2R3

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fax: (416) 954-6329

**Manitoba Region**

Aboriginal Affairs and Northern

365 Hargrave Street

Room 200

Winnipeg, Manitoba

R3B 3A3

(204) 983-4928

fax: (204) 983-7820

**Saskatchewan Region**

Aboriginal Affairs and Northern

Room 200, 1 First Nations Way

Regina, Saskatchewan

S4S 7K5

(306) 780-5945 or 780-5392

fax: (306) 780-5733

(867) 669-2500

fax: (867) 669-2709

**Yukon Region**

Aboriginal Affairs and Northern

415C-300 Main Street

Whitehorse, Yukon

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## Annex C: Community Approval Process Plan Activities Schedule

| Step # | Developmental Activities: | R = Responsible A = Assistance I = Informed I* = Informed at the request of the First Nation | | | | | |
|---|---|---|---|---|---|---|---|
| | | FN | RC | Verifier | AANDC | NRCan | Contractor |
| **Quarter 1** | | | | | | | |
| 1 | FN identifies Coordinator | R | A | | I | | |
| 2 | FN identifies Assistant (optional) | R | A | | | | |
| 3 | FN appointed Lands Committee (optional) | R | A | | I | | |
| 4 | FN 24 month work plan developed (recommended) | R | A | | A | | |
| 5 | AANDC IA work plan developed | A | A | | R | | |
| 6 | NRCan research for legal land description complete | I | I* | | I | R | |
| 7 | FN Legal advisor in place | R | I | | I | | |
| 8 | FN identifies CAPP contact person | R | I | | I | | |
| 9 | Phase I ESA joint working group established and firm appointed | A | I* | | R | | I |
| 10 | FN eligible voters list identified | R | A | | I | | |
| 11 | FN community meetings scheduled (optional) | R | A | | I | | |
| 12 | FN recommends Verifier | R | A | | I | | |
| 13 | FN introductory meeting with Verifier | R | A | | A | | |
| **Quarter 2** | | | | | | | |
| 14 | FN draft of land code developed | R | A | | | | |
| 15 | FN legal review of the draft land code completed (optional) | R | A | | | | R |
| 16 | AANDC current list of Indian Act interests provided and other information as per 6.3 (c) of FA | I | | | R | | |
| 17 | AANDC current IA revenue money report provided | I | | | R | | |
| 18 | NRCan legal land description action plan approved | A | I* | | A | R | |
| **Quarter 3** | | | | | | | |
| 19 | FN draft of land code continuing | R | A | A | | | |
| 20 | FN legal review of the draft land code completed (optional) | R | | | | | R |
| 21 | AANDC draft Phase 1 ESA report submitted | I | | | R | | R |
| 22 | AANDC outstanding land issues list | I | I | | R | | |
| **Quarter 4** | | | | | | | |
| 23 | FN legal review of the draft land code completed | R | | | | | R |
| 24 | FN draft land code submitted to Verifier | R | A | | | | |
| 25 | Verifier review of the draft land code completed | I | I | R | | | |
| 26 | AANDC Phase 1 ESA report accepted by the parties | A | A | | R | | A |
| 27 | Operational funding level identified | I | | | R | | |
| 28 | NRCan draft legal description completed | I | I* | | I | R | |
| 29 | FN submits outstanding land issues to AANDC region | R | I | | I | | |
| 30 | Verifier completes comparison of draft legal land description | I | | R | | | |

| Step # | Developmental Activities: | R = Responsible A = Assistance I = Informed I* = Informed at the request of the First Nation | | | | | |
|---|---|---|---|---|---|---|---|
| | | FN | RC | Verifier | AANDC | NRCan | Contractor |
| **Quarter 5** | | | | | | | |
| 31 | FN legal review of the draft land code completed | R | | | | | R |
| 32 | FN draft land code submitted to Verifier | R | A | | | | |
| 33 | Verifier review of the draft land code completed | I | I | R | | | |
| 34 | NRCan legal land description complete | I | I* | | I | R | |
| 35 | AANDC final list of *Indian Act* interests provided and other information as per 6.3 (c) of FA | I | | | R | | |
| 36 | AANDC final revenue account provided | I | | | R | | |
| 37 | AANDC draft IA complete | A | A | | R | | |
| 38 | AANDC initial legal review of IA complete | | | | R | | |
| 39 | FN initial legal review of IA complete | R | | | | | R |
| 40 | FN alternate vote procedure proposed (if necessary) | R | A | A | I | | |
| **Quarter 6** | | | | | | | |
| 41 | FN legal review of the final land code completed | R | | | | | R |
| 42 | FN Land Code ready for final presentation to Chief and Council & community | R | A | | | | |
| 43 | Verifier confirms compliance of the final Land Code with the Framework Agreement | I | | R | I | | |
| 44 | FN final legal review of IA complete | R | | | | | R |
| 45 | AANDC final legal review of IA complete | | | | R | | |
| 46 | Final IA is initialed/signed | A | | | R | | |
| 47 | FN list of eligible voters supplied to Verifier | R | A | | | | |
| 48 | FN community ratification process document supplied to verifier | R | A | | | | |
| 49 | Verifier confirms list of eligible voters & CRP | I | | R | | | |
| 50 | FN official vote date set | R | A | A | A | | |
| **Quarter 7** | | | | | | | |
| 51 | FN Ratification Officer in place | R | A | | | | |
| 52 | FN finalizes vote package | R | A | | | | |
| 53 | Verifier's acceptance of vote package | I | | R | | | |
| **Quarter 8** | | | | | | | |
| 54 | FN conducts vote on Land Code and IA | R | A | A | | | |
| 55 | Verifier's report on vote and land code | I | I | R | I | | |
| 56 | IA signed (if community ratifies and if IA only initialed in step 45) | A | | | R | | |

## Annex D: Sample FNLM Assessment Questionnaire

### Questionnaire for First Nation Entry to the *Framework Agreement on First Nation Land Management* and the *First Nations Land Management Act*

# FIRST NATION ENTRY TO THE *FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT AND THE FIRST NATIONS LAND MANAGEMENT ACT* QUESTIONNAIRE

***Privacy Act Statement***

In order to accept your application to the First Nations Land Management Regime, we require certain personal information from you. This statement explains the purposes and use of your personal information.

Only information needed to respond to your request and/or program requirement will be requested. Collection and use of personal information is in accordance with the *Privacy Act*. In some cases, information may be disclosed without your consent for purposes not outlined in the statement pursuant to subsection 8(2) of the *Privacy Act*.

The collection and use of your personal information for the First Nations Land Management Regime is authorized by the *First Nations Land Management Act* and is required for your participation.

We will use your personal information for the following purpose(s): Information on individuals is used by Aboriginal Affairs and Northern Development Canada's First Nations Land Management Regime employees in order to respond to your request and/or support program requirements.

The information collected is described in the Program Administration class of personal information and will be retained for a period of five years by the FNLM Directorate, after which it will be sent to Library and Archives Canada.

As stated in the *Privacy Act*, you have the right to access your personal information and request changes to incorrect information. Contact our office at gtpn-fnlm@aadnc-aandc.gc.ca to notify us about incorrect information or withdraw participation after submitting your information which may be found in AANDC's Info Source Chapter. For more information on Info Source please contact AANDC's ATIP Directorate by phone at 819-953-3947 or by email at ATIP.AIPRP@aadnc-aandc.gc.ca."

**This Questionnaire is separated into 6 Parts:**

Part 1: I. Governance and Communication with Members
Part 2: II. Pursuing Economic Development Opportunities
Part 3: III. Land Issues
Part 4: IV. Environmental Issues and Environmental Management on Reserve
Part 5: V. Experience with Land Administration under the *Indian Act*
Part 6: VI. Conclusion

| **The following Questionnaire is the Application from:** | | |
|---|---|---|
| Band Name | Submitted to (Name of Regional Office): | Date (YYYYMMDD) |
| **This Questionnaire was approved by:** | | |
| Name 1 | Title 1 | |
| Name 2 (If Applicable) | Title 2 (If Applicable) | |
| **Should Aboriginal Affairs and Northern Development Canada wish to discuss this Questionnaire, the individual in your community to contact is:** | | |
| Contact Information<br>Name | Title | |
| Email Address | | Telephone Number |

SAMPLE

**Questionnaire**

Please complete the following questions. Where space is insufficient, additional responses may be provided separate to the questionnaire. For supplementary responses, ensure the question is clearly identified, and include the name of your community in the header.

**Part 1: Governance and Communication with Members**

First Nations that have been successful under the FNLM regime have strong governance, transparency, and accountability to the membership. These governance attributes, as well as clear and effective financial management structures, contribute to the systematic and timely completion of land code development and ratification.

Your answers to the questions below will assist AANDC in understanding your community's governance and communication experience relative to the FNLM developmental process.

In support of assessing communication with members, AANDC will review any community websites, newsletters and other public posting created by the First Nation.

| **Part 1: Governance and Communication with Members** | Yes | No |
|---|---|---|
| 1. Is your community presently or planning to pursue a self-government agreement or treaty with Canada, which will include some or all of your community's reserve lands? | ○ | ○ |

If yes, please describe the current status of the negotiations.

2. When is your community's next election for Chief and Council scheduled?

| | | |
|---|---|---|
| 3. Does your community have regular meetings to discuss important issues? | ○ | ○ |
| 4. Have there been any discussions at community meetings about joining the FNLM Regime? | ○ | ○ |

If yes, please describe how this was indicated, including details from meetings, newsletters etc.

| | | |
|---|---|---|
| 5. Does your community have a strategy for engaging off reserve members? | ○ | ○ |

If yes, please describe.

| | | |
|---|---|---|
| 6. Are your community's audited financial statements and fiscal plans available to community members? | ○ | ○ |

If yes, please describe how your community accesses financial statements and fiscal plans.

7. What mechanisms have you established to share information with community members on the operation, objectives, financing, and performance of programs and services made available to community members?

SAMPLE

**Part 2: Pursuing Economic Development Opportunities**

The potential for short-term and long-term economic development opportunities arising out of the *Framework Agreement* and the First Nation's land code are well documented on the LAB's website (www.labrc.com). The FNLM Regime can unlock economic development in a way that is not possible (or only possible after delays) under the *Indian Act*. A First Nation's detailed plan to pursue economic development opportunities is a factor considered in the entry process to the FNLM Regime.

Your answers to the questions below will help AANDC to better understand your economic development plans, both short-term and long-term. You are encouraged to attach any documents which will assist AANDC in assessing your economic development opportunities.

| **II. Pursuing Economic Development Opportunities** | Yes | No |
|---|---|---|
| 1. Has your community previously completed a land use plan or resource plan? | ○ | ○ |

If yes, please describe how your community has progressed in implementing your plan.

| | | |
|---|---|---|
| 2. Is your community engaged with any industry partners? | ○ | ○ |

If yes, please describe the project(s) and expected outcomes.

3. Please list and describe any current and future economic development activities (for example construction, natural resources, casino, tourism, etc) that are being pursued on reserve.

| | | |
|---|---|---|
| 4. Does your community currently have an economic development officer? | ○ | ○ |
| 5. Does your community currently have in place an economic development organization (for example an economic development corporation and/or a community cooperative)? | ○ | ○ |

If yes, please describe your community's current development strategy.

**Part 3: Land Issues**

A ratified land code effectively replaces 34 sections of the *Indian Act* that affect reserve lands. Apart from limited exclusions, land codes apply to entire reserves to avoid disjointed administration of lands. If more than one reserve has been set apart for the use and benefit of a First Nation, the First Nation may establish a land management regime for any or all of its reserves.

Recent amendments to the *Framework Agreement* and the *FNLMA* make it possible to resolve outstanding title or boundary issues after a First Nation ratifies a land code and Individual Agreement. Under limited conditions set out in Framework Agreement and FNLMA, portions of a reserve may be excluded from the land code and remain under *Indian Act*. The aim of the FNLM Regime is to bring all land within a reserve under a land code. Circumstances for exclusion are rare and exceptional. Exclusions do not take away from Canada's obligations to resolve outstanding land issues arising from when the First Nation was governed under the *Indian Act*.

As part of the entry process, it is important for First Nations to identify any land concerns/issues of which AANDC may not be aware. It is also important for First Nations to understand that the FNLM Regime was not designed to solve or remediate existing land issues.

In completing this section it is important to reflect on the scope and complexity of existing land issues.

Please note that AANDC will also review internal documents regarding land title issues.

| **III. Land Issues** | Yes | No |
|---|---|---|
| 1. Does your community have any unresolved land issue(s)? | ○ | ○ |

If yes, please describe the issues(s).

SAMPLE

| | | |
|---|---|---|
| 2. Does your community have any title or external boundary issue(s), pertaining to your reserve lands? | ○ | ○ |

If yes, please describe the issue(s).

| | | |
|---|---|---|
| 3. Is your community aware of any outstanding road issue(s) with the province or nearby municipality pertaining to your reserve lands that remain unresolved? | ○ | ○ |

4. Are there any lands that your community believes should be added to reserve status through:

| | | |
|---|---|---|
| Additions to Reserve | ○ | ○ |
| Treaty Land Entitlements | ○ | ○ |
| Specific Claims | ○ | ○ |

If yes, please identify lands and current status.

**Part 4: Environmental Issues and Environmental Management on Reserve**

As part of the entry process, it is important for First Nations to identify any environmental issues including any risks of natural disasters. It is also important to consider what steps have been taken, or are planned, to manage environmental responsibilities and lessen the impact of current and future environmental issues.

Your answers to the questions below will assist AANDC in better understanding any environmental issues on reserve lands and your community's previous experience with environmental management.

In support of assessing environmental issues and management, AANDC will review any environmental licenses issued, as well as other documents and databases related to the environment and your community.

| **IV. Environmental Issues and Environmental Management on Reserve** | Yes | No |
|---|---|---|
| 1. Is your community aware of any unresolved environmental contamination issues (including off reserve)? | ○ | ○ |

If yes, please describe.

| | | |
|---|---|---|
| 2. Is your community aware of any flooding issues on your community's reserve lands? | ○ | ○ |
| 3. Have any environmental site assessments (ESA) been completed on your community's reserve(s) in the last 5 years? | ○ | ○ |
| 4. Did the ESA reveal significant concerns? | ○ | ○ |

If yes, please identify which lands were assessed and the dates of the assessments.

| | | |
|---|---|---|
| 5. Has there been any follow-up or remediation on noted concerns? | ○ | ○ |
| 6. Has your community identified key environmental areas which may need to be regulated under a First Nation law? | ○ | ○ |

7. Please describe any known environmental issues affecting your community (e.g. fuel tank storage management, solid waste management, sewage treatment and disposal, and environmental emergencies).

8. Please describe your community's environmental strategy.

SAMPLE

**Part 5: Experience with Land Administration under the *Indian Act***

Once a First Nation community becomes operational under the FNLM Regime it accepts responsibility for all future land governance decision-making, acts and omissions. However, federal responsibility will remain for acts or omissions committed by Canada or its agents while the First Nation was under the *Indian Act*.

Your answers to the questions below will assist AANDC in understanding your community's previous land experience under the *Indian Act*. Please note that questionnaires will be cross-referenced with AANDC records to identify First Nations that have participated in *Indian Act* land administration programs (such as the Reserve Land and Environmental Management Program (RLEMP)).

| **V. Experience with Land Administration under the *Indian Act*** | Yes | No |
|---|---|---|
| 1. Please describe your community's current approach to land management and provide any supporting documentation. | | |
| 2. Does your community have unregistered land interest holders? | ○ | ○ |
| 3. If your community has registered land interest holders on your reserve or reserves, are they: | | |
| Permitted? | ○ | ○ |
| Leased? | ○ | ○ |
| Certificate of Possession? | ○ | ○ |
| Other? | ○ | ○ |
| If yes for other transactions, please explain. | | |
| 4. Does your community rely on land management from an outside source such as a Tribal Council or at the Treaty level or from another First Nation? | ○ | ○ |
| 5. Do you currently have a land manager? | ○ | ○ |
| If yes to question 5: | | |
| a. Has your land manager participated in land management training (federal government, post secondary or otherwise)? | ○ | ○ |
| b. Has your land manager completed and administered any land transactions in the last year? | ○ | ○ |
| If no to question 5: | | |
| c. Is your community planning to hire a land manager? | ○ | ○ |
| 6. Describe your strategy for establishing and maintaining a community land management regime. | | |

**Part 6: Conclusion**

Please explain, in detail, why your community would be successful as a FNLM First Nation.

SAMPLE